IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO.388 OF 1989

Raygiri Gosavi .. .. Appellant

Versus

Housabai Urunkar (since deceased)
through her LRs Respondents

Mr.S.R.Sadavarte for appellant

Mr.M.R.Katikar for respondents

CORAM : P.V.KAKADE, J.

DATE : 7TH JULY, 2005.

P.C.:

1. This is an appeal preferred by the appellant against the judgment and order passed by Addl.District Judge, Kolhapur dated 29.11.1988 dismissing the appeal and confirming the judgment and order passed by Civil Judge, Junior Division, Kolhapur dated 19.10.1984.

2. The plaintiff - Housabai (since deceased) filed the suit on the ground that the defendant was the landlord in CTS No.238/9 at Kolhapur. Her husband deceased Rajaram had taken two rooms in the property on lease since 1947 on a rent of Rs.2/- per month. Rajaram died in the year 1950. Plaintiff claims that after the death of Rajaram the tenancy right of the suit property devolved on the defendant, who accepted the same by accepting the rent for her right from the year 1950. One Vasant, Shrikatn and Shashikant are sons of the plaintiff and they are now said to have attained majority and had married and in the result of quarrels in the family members of three sons of plaintiff are residing separately from her since 5/6 years before the suit. The plaintiff contended that she alone resided in the suit property since 5/6 years prior to the suit. She has further alleged that the landlord filed the suit for possession against three sons of plaintiff. The sons resisted the suit and the suit was decreed. The plaintiff further alleged that the defendant threatened to vacate the suit premises on or before 1.9.1980. Hence the present suit came to be filed. It is also alleged that the decree in Reg. Suit No.267 of 1975

filed by the defendant was not binding upon her as she was not party to that proceeding and only her children were party to the said proceeding.

. The defendants resisted the suit on various grounds, inter alia, submitting that the suit property was let out to the children of plaintiff for the first time in the year 1960 but only one of the son used to pay rent to them. He had not accepted any rent from the plaintiff and had sought to dismiss the suit. The learned trial judge after hearing both the parties and on the basis of available evidence came to the conclusion that the plaintiff-Housabai was lawful tenant in the suit property. It was also held that the defendant was likely to obtain forcible possession from her and as such suit was decreed for perpetual injunction against the defendants. It was also held that the decree passed in RCS. No.267 of 1975 against the plaintiff's sons was not binding on her as she was not party to that proceeding. The appeal was carried to the District Court. The learned Addl. District Judge, Kolhapur after hearing both the parties confirmed the findings recorded and reasoning adopted by the learned trial judge and dismissed the appeal. Hence the present

appeal.

3. Now the subsequent events, as are clear and admitted from the record, are that Respondent Housabai has died and her children are brought on record as her legal heirs. Now it is also an admitted position that the Suit No.149 of 1975 was decreed against the present respondents i.e. legal heirs of Housabai, which has become final and therefore, by virtue of the said order the present respondents have lost right qua the suit property. It is pertinent to note that the present respondents had not filed any appeal against the judgment and order passed in Civil Suit No.149 of 1975 and in fact they did not contest the matter. In this regard reference must be had to the statement made by Housabai in her plaint to the effect that neither her three sons nor her two daughters, who are married, were residing with her and in fact they were residing separately. However, this aspect is controverted on behalf of the respondents stating that two daughters are residing in the suit premises. The said decree was also held to be not binding on deceased Respondent Housabai and therefore, it follows that the present respondents i.e. children of deceased Housabai will have no right

over the suit property in any manner whatsoever by virtue of earlier decree passed against them.

. The learned counsel for the respondents submitted that two daughters of deceased Housabai are residing in the suit premises and therefore, the appeal cannot be disposed of only on the basis that Housabai died. However, it may be noted that those daughters, against whom, no decree was passed in the earlier suit, would be at liberty to pursue their independent remedy if they so wish. However, so far as present appeal is concerned, the appeal will have to be allowed on the only ground that the deceased Housabai the respondent is no more. With these observations the appeal is hereby allowed. The judgment and order passed by both the courts below are hereby set aside. In view of the facts and circumstances there shall be no order regarding costs.